UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: EXPRESS SCRIPTS, INC., PHARMACY BENEFITS MANAGEMENT LITIGATION MDL No. 1672

REMAND ORDER

Before the Panel:* Defendants Express Scripts, Inc., and National Prescription Administrators, Inc., move under Panel Rule 10.2 to vacate the Panel's order conditionally remanding the action listed on Schedule A (*Lynch*) to the Southern District of New York, its transferor court. Plaintiff in the action opposes the motion and supports remand.

After considering the argument of counsel, the Panel finds that remand of this action under 28 U.S.C. § 1407 is warranted. The transferee judge has determined that retention of this action would not serve the purposes of Section 1407. In opposition to remand, defendants first argue that the suggestion of remand was issued without prior notice to defendants and, thus, they lacked an adequate opportunity to be heard on whether remand was appropriate. But the record shows that defendants filed a brief asking the transferee court to reconsider and vacate its suggestion of remand. The transferee court did not elect to do so. Additionally, under Panel Rule 10.1(b), defendants have had an opportunity be heard on their opposition to remand through the Panel briefing process.

Defendants further argue that, in order to conserve judicial resources and prevent inconsistent pretrial rulings, the transferee court should decide the unresolved issues presented in the pending motions for summary judgment and motion for leave to file amended complaint. The transferee judge, however, considered the pending motions and determined that they raise issues specific to the facts of *Lynch*, turn on issues of New York state law, and do not call upon any expertise that the transferee court has developed in handling the litigation. It further determined that centralized proceedings on these case-specific issues are unnecessary because *Lynch* is the sole remaining action in MDL No. 1672.

In considering the question of remand, the Panel consistently gives great weight to the transferee judge's determination that remand of a particular action at a particular time is appropriate because the transferee judge, after all, supervises the day-to-day pretrial proceedings. *See, e.g., In re: Columbia/HCA Healthcare Corp. Qui Tam Litig. (No. II)*, 560 F. Supp. 2d 1349, 1350 (J.P.M.L. 2008). The transferee judge's suggestion of remand obviously indicates that "'he perceives his role under Section 1407 to have ended.'" *Id.* at 1350 (quoting *In re: Holiday Magic Secs. and Antitrust Litig.*, 433 F. Supp. 1125, 1126 (J.P.M.L. 1977)). Here, the transferee judge explained his reasons for determining that Section 1407 remand is warranted. His determination was appropriately based on "the totality of circumstances" involved in the docket. *See In re: Brand-Name Prescription Drugs Antitrust Litig.*, 170 F. Supp. 2d 1350, 1352 (J.P.M.L. 2001) ("Whether Section 1407 remand is appropriate for actions or claims in any particular multidistrict docket is based upon the totality of circumstances involved in that docket.").[1] The suggestion of remand thus is well-taken.

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* Judge Marjorie O. Rendell and Judge Lewis A. Kaplan took no part in the decision of this matter.

IT IS THEREFORE ORDERED that this action is remanded to the Southern District of New York.

PANEL ON MULTIDISTRICT LITIGATION

Sarah S. Vance
Chair

Charles R. Breyer
R. David Proctor
Ellen Segal Huvelle
Catherine D. Perry

[1] The pendency of dispositive motions is not an obstacle to remand under Section 1407. *See In re Baseball Bat Antitrust Litig.*, 112 F. Supp. 2d 1175, 1177 (J.P.M.L. 2000) (ordering remand in accordance with suggestion of remand issued by transferee judge, despite remaining pretrial discovery and pending motions to dismiss).

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SCHEDULE A

Southern District of New York

LYNCH v. NATIONAL PRESCRIPTION ADMINISTRATORS, INC., ET AL.,
C.A. No. 1:03-01303
(Eastern District of Missouri, C.A. No. 4:05-00828)